

CSA Notice and Request for Comment

Draft Regulation to amend Regulation 23-101 respecting Trading Rules

April 7, 2016

Introduction

The Canadian Securities Administrators (the CSA or we) are publishing for comment a draft *Regulation to amend Regulation 23-101 respecting Trading Rules* (Regulation 23-101) (the Draft Amendments).

The text of the Draft Amendments is published with this notice and will also be available on the websites of the CSA jurisdictions, including:

www.lautorite.qc.ca
www.albertasecurities.com
www.bcsc.bc.ca
www.gov.ns.ca/nssc
www.fcnb.ca
www.osc.gov.on.ca
www.fcaa.gov.sk.ca
www.msc.gov.mb.ca

Substance and Purpose

The substance and purpose of the Draft Amendments is to amend Regulation 23-101 to lower the active trading fee cap¹ applicable to trading in certain securities. In setting out the maximum fee that can be applied to the execution of an order entered to execute against displayed volume, the Draft Amendments would distinguish between securities that are listed on both a Canadian and a U.S. exchange (Inter-listed Securities) and securities that are listed on a Canadian exchange, but not listed on a U.S. exchange (Non-Inter-listed Securities).

Summary of the Draft Amendments

The Draft Amendments would amend section 6.6.1 of Regulation 23-101 to cap active trading fees for Non-Inter-listed Securities at \$0.0017 per security traded for an equity security or per unit traded for an exchange-traded fund, if the execution price of the security or unit traded is greater than or equal to \$1.00.

¹ An active trading fee refers to the fee applied for executing an order that was entered to execute against a displayed order on a particular marketplace.

Local Matters

Certain jurisdictions are publishing other information required by local securities legislation with this notice.

Annex

The background and a description of the Draft Amendments are set out in Annex A to this notice.

Authority of the Draft Amendments

In those jurisdictions in which the Draft Amendments are to be adopted, the securities legislation provides the securities regulatory authority with rule-making or regulatory authority in respect of the subject matter of the Draft Amendments.

Deadline for Comments

Please submit your comments to the Draft Amendments, in writing, on or before July 6, 2016. If you are not sending your comments by email, please send a CD containing the submissions (in Microsoft Word format).

Where to Send Your Comments

Address your submission to all of the CSA as follows:

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

Deliver your comments only to the addresses listed below. Your comments will be distributed to the other participating CSA jurisdictions.

Madame Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, rue du square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal, Québec H4Z 1G3
Fax: 514 864-6381
consultation-en-cours@lautorite.qc.ca

The Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario M5H 3S8
Fax: 416 593-2318
comments@osc.gov.on.ca

Comments Received will be Publicly Available

Please note that we cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of written comments received during the comment period. In this context, you should be aware that some information which is personal to you, such as your email and address, may appear on certain CSA web sites. It is important that you state on whose behalf you are making the submission.

All comments will be posted on the Autorité des marchés financiers web site at www.lautorite.qc.ca and on the Ontario Securities Commission web site at www.osc.gov.on.ca.

Questions

Please refer your questions to any of the following:

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<p>Paul Redman Principal Economist, Strategy & Operations Ontario Securities Commission predman@osc.gov.on.ca</p>	<p>Kathleen Blevins Senior Legal Counsel Alberta Securities Commission kathleen.blevins@asc.ca</p>
<p>Sasha Cekerevac Regulatory Analyst, Market Regulation Alberta Securities Commission sasha.cekerevac@asc.ca</p>	<p>Bruce Sinclair Securities Market Specialist British Columbia Securities Commission bsinclair@bcsc.bc.ca</p>

ANNEX A

Background and description of the Proposed Amendments

On May 15, 2014, the CSA published for comment proposed amendments to Regulation 23-101 that would, amongst other changes, introduce trading fee caps for exchange-traded securities (the 2014 Notice).¹ The fee caps were proposed to address concerns raised by marketplace participants related to the implications of the Order Protection Rule (OPR) on their active trading fee costs, given that OPR necessitates that marketplace participants trade with the best-priced displayed orders, regardless of the level of trading fees charged by marketplaces displaying those orders.

In a separate notice published today, the CSA has finalized the amendments proposed in the 2014 Notice. As a result, for equity securities and exchange-traded funds priced at or above \$1.00, an active trading fee cap of \$0.0030 per share or unit traded will come into force on July 6, 2016. For further details, please refer to the CSA Notice of Approval published concurrently with this notice.

In the 2014 Notice we indicated that the \$0.0030 per share fee cap for securities priced at or above \$1.00 was set at the same level as the cap set in the U.S. under Rule 610(c) of Regulation National Market System (NMS). We proposed this cap because it is an established benchmark that was created by the U.S. Securities and Exchange Commission in the context of similar order protection requirements.

However, in the 2014 Notice we acknowledged that the U.S. trading fee cap for securities priced at or above \$1.00 was considered by some to be too high. These concerns were also reflected in the comments received to the 2014 Notice where a number of commenters indicated that the cap was not reflective of the lower average price of Canadian securities relative to the average price of U.S. securities.

We recognize the views of some stakeholders that the fee cap should be lower. However, our market is highly integrated with the U.S. and there is significant trading activity in Inter-listed Securities. As a result, we are concerned about the potential negative consequences for the Canadian market from establishing a trading fee cap for Inter-listed Securities that is significantly different than comparable regulatory requirements in the U.S. As liquidity providers are sensitive to rebates they receive for posting orders on certain marketplaces, a decrease in fees charged by those marketplaces would also result in a decrease in rebates available to liquidity providers. If the difference in rebates between Canada and the U.S. for Inter-listed Securities was too large, a shift of liquidity to U.S. marketplaces and widening spreads on Canadian marketplaces could result.

However, the concerns noted above do not apply for Non-Inter-listed Securities and in determining a method by which we could address some of the concerns raised in relation to trading fee costs, we considered the comments received to the 2014 Notice,

¹ Published in the *Bulletin de l'Autorité des marchés financiers*, volume 11, No. 19 of May 15, 2014.

specifically that the trading fee should reflect the value of the stocks traded. We calculated the volume-weighted average price for Inter-listed Securities² and found that the \$0.0030 cap for Inter-listed Securities represents 1.2 basis points. We then calculated the volume-weighted average price for Non-Inter-listed Securities and applied the same basis point equivalent. The results are illustrated in the table below.

	Volume-Weighted Average Price	Trading Fee Cap	Basis Point Equivalent
Inter-listed Securities	\$25.26	\$0.0030 per share or unit	1.2 bps
Non-Inter-listed Securities	\$14.30	\$0.0017 per share or unit	1.2 bps

The Proposed Amendments would cap active trading fees for Non-Inter-listed Securities at \$0.0017 per security traded for an equity security or per unit traded for an exchange-traded fund, if the execution price of the security or unit traded is greater than or equal to \$1.00. If the Proposed Amendments are approved, the \$0.0030 per share or unit cap would continue to apply to Inter-listed Securities priced at or above \$1.00.

² The volume-weighted average price is calculated from June 29, 2014 to June 28, 2015.